



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

January 27, 1958

Hon. H. H. Wellborn  
County Attorney  
Rusk County  
Henderson, Texas

Opinion No. WW-347

Re: Wilful burning of an automobile belonging to another.

Dear Mr. Wellborn:

You have requested an opinion as to the proper article of the Texas Penal Code under which to prosecute the criminal offense of the wilful burning of an automobile belonging to another.

Article 1304 of the Penal Code provides:

"'Arson' is the wilful burning of any house included within the meaning of the succeeding article of this chapter."

Article 1318 of the Penal Code provides:

"Whoever shall wilfully burn any building not a house as defined in the preceding chapter, or shall wilfully burn any stack of corn, hay, fodder, grain, or flax, or any pile of boards, lumber, or wood, or any fence or other inclosure, the property of another, shall be confined in the penitentiary not less than two nor more than five years, or be fined not exceeding two thousand dollars."

Article 1323 of the Penal Code provides:

"Whoever wilfully burns any personal property belonging to another, the punishment for which is not otherwise provided for in this chapter, shall be fined not exceeding two thousand dollars."

Article 1350 of the Penal Code provides:

"(1) It shall be unlawful for any person to wilfully injure or destroy, or attempt to injure or destroy, any property belonging to another, of any kind whatsoever, without

the consent of the owner and lienholder, if any, thereon.

"(2) Whenever the law provides a particular punishment for the wilful injury or destruction by a certain means, such as by burning, or whenever a particular punishment is provided for wilful injury or destruction of a certain type of property, such as fences, the provisions of this Act shall not be applicable.

" . . . "

Article 1404b of the Penal Code provides:

"Section 1. Any person who breaks into or enters a vehicle with the intent of committing a felony or the crime of theft shall be guilty of a felony and upon conviction thereof shall be confined in the State penitentiary for a term of not more than three (3) years.

" . . . "

It is our opinion that Article 1323 is the proper article of the Penal Code under which to prosecute the offense of the wilful burning of an automobile belonging to another. Articles 1304 and 1318 are not applicable because they require the burning of a house or other building, agricultural products, lumber, etc. Article 1350 is not applicable because of Section 2 of that article which provides:

"Whenever the law provides a particular punishment for the wilful injury or destruction by a certain means, such as by burning, or whenever a particular punishment is provided for wilful injury or destruction of a certain type of property, such as fences, the provisions of this Act shall not be applicable."

Article 1404b is not applicable because that article requires a breaking in or entering of the automobile and an intent to commit a felony or theft. The facts that you have presented do not show a breaking or entering of the automobile or an intent to commit a felony or theft.

Therefore, under the facts that you have stated, Article 1323 of the Texas Penal Code is the proper Article under which to file the above criminal offense of wilful burning of an automobile belonging to another.

Hon. H. H. Wellborn, page 3 (WW-347)

SUMMARY

Article 1323 is the proper Article of the Texas Penal Code under which to prosecute the criminal offense of the wilful burning of an automobile belonging to another.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By *Richard B. Stone*  
Richard B. Stone  
Assistant

APPROVED:

OPINION COMMITTEE:

George P. Blackburn, Chairman  
B. H. Timmins, Jr.,  
Mary K. Wall  
Milton Richardson

REVIEWED FOR THE ATTORNEY GENERAL  
BY: W. V. Geppert